

**MINUTES:** The regular Quarterly Meeting of the Board of Commissioners of the Town of Henlopen Acres held on Friday, July 8, 2011 at 10:00 a.m. at Town Hall, 104 Tidewaters in Henlopen Acres, Delaware.

**PRESENT:**

Wanda Davis	Mayor
David L. Hill	Commissioner
Beatrix Richards	Commissioner
Frank Jamison	Commissioner
David Lyons	Commissioner
Thomas A. Roth	Town Manager
Sharon Karl	Town Clerk
Glen Mandalas	Town Solicitor
Katherine McNeilly	55 Rolling Road
Tom Ingram	60 Tidewaters
Gail McDermott	7 Pine Reach
Martin Clark	59 Tidewaters
John Scheurer	62 Tidewaters
Henry DeWitt	55 Fields End

**ABSENT:**

Winifred W. Kee	Commissioner
John Staffier	Commissioner

**1. Call to Order - Pledge of Allegiance**

Mayor Davis led the Pledge of Allegiance.

**2. Approval of Minutes**

**a. Quarterly Meeting – April 8, 2011**

Commissioner Jamison made a motion to approve the minutes. Commissioner Richards seconded and the motion passed unanimously.

**b. Special Meeting – June 13, 2011**

Commissioner Lyons made a motion to approve the minutes. Commissioner Richards seconded and the motion passed unanimously.

**3. Treasurer’s Report – Commissioner Hill**

Mr. Hill referring to the Financial Statements in the packet said that Mr. Roth has provided preliminary year end information for year ended 6/30/11. Our revenue was \$8,375.71 over budget. On the expense side we’re under budget. We had Ordinary Income on this Operating Budget of \$17,621.86. Even though these are preliminary numbers subject to year-end adjustments and accruals it looks like we will achieved a

balanced operating budget. Other Income, we have exceeded income projections due largely to a significant increase in Transfer Taxes; \$194,902.12 received compared to \$45,000 budgeted. The road project was the single biggest item under Capital Expenditures. We had a Net Other Income of \$153,377.05 and Net Income of \$170,998.91. We budgeted for a \$72,883.20 total deficit. The Mayor, Mr. Roth and the Town employees did a very good job of running a tight ship. The bad news is that they have to do it again this year.

Mr. Hill said that our Audit Committee worked with Mr. Roth and our accountants to try to speed up the audit process so that we would have Audited Financials sooner than we have received them in the past. Mayor Davis said we are striving for it. Mr. Roth and Ms. Karl are working this week on getting the figures together to give to the accountants by July 31<sup>st</sup>.

#### **4. Maintenance Report – Sonny McClure, Maintenance Supervisor**

Mr. Roth said that Mr. McClure's Water Report is in the packet. The usage was within normal range and he had nothing to add to that. Mr. McClure reported that well #3 went down last week. Mr. Lyons asked what that means. Mr. Roth said that we have eleven wells and one was not pumping so we shut it down. Mr. Lyons asked what the cost will be for the repair. Mr. Roth said that we're hoping it is just an electrical problem and estimated the repair to cost approximately \$1500.

#### **5. Security Report – Lee Stewart, Security Supervisor**

Mr. Roth said that the Security report is included in the packet. We hired a new part time employee. He started last week. We did a background check. Mr. Lyons asked in reference to the security report June 1 theft of gasoline, didn't that happened last year as well and wasn't it the same boat slip. Mr. Roth said that it was the same boat. Mayor Davis said it is the only boat that has had that problem.

Mr. Hill inquired about the three break-ins at North Shores. Mayor Davis said that she talked to Mr. Stewart about them and he said that it seems to have been unsupervised construction workers who were working in the area and he knows who they are. Two houses had nothing taken and a flat screen television was taken from the third house. Mr. Roth said that Mr. Stewart told him that all three houses did not have security alarm signs.

#### **6. Town Manager's Report – Thomas Roth, Town Manager**

Mr. Roth said that his report is in the packet. He highlighted a few things. Business Licenses are way up. Marina Slip rentals have been slow, but keep trickling in. I expect to have two more today. It doesn't give us the full rental for the season, but it does give us something. Presently we have eight empty slips.

Mr. Jamison asked if the kayak storage sold out. Mr. Roth said the rack holds sixteen and twelve were rented. Mr. Hill said that there are fourteen violations under Trash Container and asked if that was a newly developed problem. Mr. Roth said that he did a drive through of the Town the other week and wrote down house numbers where cans were not completely put away or left out and he sent out a friendly reminder. Ms. Richards asked what the next step was. Mayor Davis said a fine.

Mayor Davis asked if there were any further questions for the Town Manager. Mayor Davis pointed out that there are two letters in the packet sent to Senator Bunting and Representative Schwartzkopf in regard to bills that she hoped would not pass, but did. Also in the packet are two complimentary letters received from residents, one about the paving and another letter about security. Mayor Davis thanked the residents for taking the time to write.

## 7. UNFINISHED BUSINESS

### a. §130-58 Height restriction

Mayor Davis said that §130-58 Height restriction is what we just had the Public Hearing on. Mr. Hill said that he reviewed the Resolution and it makes sense. Mr. Hill said that he noticed Mr. Coleman's comment that it needs to be more clearly defined, but "floor area" is a defined term in section §130-4. He said as he understands that definition everything gets counted in the allowed 6,000 square feet except the uninhabitable attic and the below grade or partially below grade, 6-1/2 feet or less. Mr. Hill said, as Mr. Roth pointed out, "living area" is not a defined term and it created some inconsistencies and ambiguities with the Building Code which did define "living area".

Mr. Hill said that we have to think of any unintended results if we go forward. This change makes sense and fits together where a house can't be more than two "floor areas" above grade. If a floor area partially below grade has a ceiling greater than 6-1/2 feet then only one floor area can be built above it. Our major objective is we don't want houses with more than two floors. The previous two stories above grade failed. This also works in the flood plain area where we have some slightly different definitions. Mr. Hill said that this has been talked about for a long time. The Planning Commission debated it several sessions and we've talked about it here at several sessions. Mr. Hill said "living area" should be changed to "floor area" and that he could not see any unintended results.

Mr. Jamison said that "floor area" makes much more sense than "living area" and has been pointed out by Mr. Reed, 96 Tidewaters, on previous occasions, where people claim unused space with garages, etc. Mr. Jamison asked if on a sloping backyard you can have 6-1/2 feet then two stories. Mr. Hill said above the 6-1/2 feet was part of the problem, where someone claims that their laundry room, mud room or garage was not living area, and that was consistent with the Building Code but not consistent with the concept of "floor area". On a sloping lot the people either have to file for a variance or as Mr. Reed pointed out in several of the discussions, the house would have to step down and have split elevation. Mr. Ingram, 60 Tidewaters, asked if a loft would count in square footage. Mr. Lyons said that a loft is open and part of a livable area. Mr. Hill said that if someone wants to have a loft that the Zoning Inspector will review the specific facts and in that particular case make a decision. Mr. Lyons said that it is most important for the architects to know the rules and conform to our ordinances.

Mr. Scheurer, 62 Tidewaters said that everything that has been said is exactly right. This is a big improvement over what we had where "living area" did not have a definition and with "floor area" now we have one. It is not going to resolve 100% of the issues but it is clear on most things. Mayor Davis said that the terminology will all be coordinated in the book and that is basically what we are trying to do. Mr. Clark, 59 Tidewaters asked if "floor area" would include decks. Mr. Roth said it would include a covered deck whether enclosed or not. Mr. DeWitt, 55 Fields End had issues with sloping lots facing the canal and what was allowable. Mayor Davis said that this has been discussed many times at Environmental Review and Planning Commission meeting and it was decided that we could not have one Building Code that would fit every lot.

Mr. Hill made a motion to approve the change to §130-58 Height restriction by changing "living area" to "floor area" as proposed. Ms. Richards seconded the motion.

Mr. Mandalas asked that a roll call be done. Mr. Lyons voted yes because it follows the formula we've put in place here to try to keep the homes at 6,000 square foot. Mr. Hill voted yes for the reasons articulated in the minutes. Ms. Richards voted yes because it is a more defined term and it is in conjunction with the other part of the code. Mr. Jamison voted yes because it takes away the "living area" versus "floor

area” debate. Mayor Davis voted yes because she likes to have a defined terminology in the code, it makes it much easier for the Zoning Officer. Motion passed unanimously.

**b. Ratification of Budget for fiscal Year 2011-2012**

Mr. Hill said that we discussed the current budget extensively at the June 13<sup>th</sup> Budget Meeting and went into Executive Session to discuss personnel and salary adjustments. Based upon cumulative salary adjustments Mr. Roth has rerun the Budget that is included in the packet. In bold you will see, under Ordinary Income, increases for revenue projections to try to cover the increase in expenditures based on these salary adjustments. We’ve increased revenue on Business Licenses which have increased this year, we increased Kayak Revenue and increased Marina Slip Revenue based upon the belief that there were going to be a few extra slips rented and upon our policy of doing short term rentals. You will also see in bold how the various salary adjustments were spread through the Operating Budget. With all of those factored in we still come up with an Operating Surplus of \$109.50. It’s very tight, but it is balanced.

Mr. Hill said on the Other Income side Capital Budget there were no changes. We’re still looking, largely because of Phase IV of the Road Project, a Security Vehicle, and another Town Vehicle purchased this current year, at a deficit of (\$103,345.50). We’re looking at the Reserve to cover that deficit. We build up the Reserve to take care of things like this. Mayor Davis said that the North Shores Security should have been in bold as well because of the salary increase that related to Security employees.

Mayor Davis said that Senator George Bunting has agreed to give us \$20,000 toward our street improvement plan. We’ll have to submit the bills to DEL.DOT for their approval before we actually get the money. But Senator Bunting has approved it out of his budget. Mr. Hill confirmed that it would be under our Other Income category so that will reduce the deficit a little bit.

Mr. Lyons said the other thing is the Marina. Mr. Roth said that he has the Marina Dredging in next year’s budget. Mr. Lyons said that we need to start looking at grants for that. Mayor Davis said that only 39% of the homeowners and some of that percentage are relatives, sons and daughters, use the marina. Mayor Davis said we have the Marina and we have to maintain it and it definitely needs to be dredged because boats are having trouble getting in and out. Mr. Lyons said that we have not increased any of the Capital Reserve for the Marina. Mr. Hill said we make a \$10,000 a year contribution to the Marina Fund. This year we have \$40,000 plus interest that has accrued which is a small percentage of what is needed.

Mayor Davis said on page 2 of 5, Donations, Dues, Meetings, she would like to increase that \$440 to cover a class for Ms. Karl to attend for Municipal Town Clerk education and training through IPA. With that the mileage and travel expense will be around \$300.

Mr. Mandalas said that he is not asking for any increase in his rate this year. Mayor Davis and Ms. Richards both felt that some money should be set aside for the Comprehensive Plan. Ms. Richards said office clerical hours involved are huge. Mr. Hill said that out of pocket expenses would be printing, maps, consultation with engineers and planners so maybe \$2,500 can be budgeted. Mayor Davis said that she would be satisfied with \$2,500 for the Comprehensive Plan in the budget.

Mr. Hill said after changes we are going to end up with an Operating Deficit of (\$3,130). Mr. Lyons asked how much of the Reserves are Restricted. Mr. Roth said Transfer Tax, roughly \$650,000 is restricted. Mr. Roth recapped; added \$2,500 for the Comprehensive Plan, added \$440 under Dues and Meetings for Clerk Training, added \$300 for travel for the Clerk Training, did not add anything to Legal Fees and it adds up to \$3,130. That leaves us with an Operating Deficit of (\$3,130) and an overall Deficit of (\$106,000).

Mr. Hill made a motion to ratify the Budget as amended. Mr. Jamison seconded the motion. The motion passed unanimously.

**c. Resolution to approve Tax Rate, Water Rate and Fee Schedule**

Mayor Davis said that vendors caught without a license who had a license in prior years should pay \$50 for a license instead of \$35, as a penalty for not getting their license before they started working in the town. Having been licensed in prior years they are well aware that they need a license to work here. This would be for renewals only; if they are new and caught without a license they won't be penalized and only charged the \$35 fee.

More discussion on business license dates, renewals and penalties for failing to get a license ensued. Mr. Roth replied that business licenses are issued annually, for the calendar year and that the expiration date is clear on the license. It's December 31<sup>st</sup>. Renewals are sent out to everyone who had a license in the prior year. Mr. Roth said that once a week Security gets an updated list of businesses that have a license with the Town. Our practice has been that Security issues a warning to businesses in violation. If they ignore the warning Security issues them a fine of \$50. Mr. Roth said that there are a lot of instances where the business tries to get away with not paying for a license even though they know the rules. They should pay a fine of \$15 plus the \$35 license fee at least, and then if they still don't get a license add a \$50 fine.

Mayor Davis said in reference to the FOIA Survey in the packet that the survey of fees charged for copy per page for FOIA requests included 25 municipalities. This is a survey that Mr. Roth initiated. Mayor Davis said of the Towns that participated in the survey one charged 10 cents a copy, that was Henlopen Acres, ten were 25 cents, three 30 cents, eight 50 cents, one \$1 a copy and two said the fee depends on the type of media requested. Mr. Roth has proposed that we increase our fee to 25 cents a copy with the administrative fee remaining at \$25 an hour. Mr. Mandalas said that charging a FOIA rate consistent to what the State Government you are always safe. Mayor Davis said that we are getting more FOIA requests all the time and it takes away from the daily operation and that costs.

Mr. Clark, 59 Tidewaters, said that with FOIA the whole idea is to make a transparent government. If you make fees prohibitive then it is not a transparent government. If our costs are 25 cents a page then we should charge 25 cents a page but if they are only 10 cents a page then that is what we should charge. Mr. Roth said that the \$25 dollar administrative fee is for research, the 25 cents per copy includes the cost of copying and our time to perform the task. Mr. Roth said if it takes five minutes to make copies, we're not going to charge a percentage of \$25 but if it takes five hours of research we are going to charge \$25 an hour.

Mayor Davis said the proposed changes are; if a business is caught working before getting a renewal the fee is \$50 and 25 cents a page per copy for FOIA requests. The Property Tax rate \$2.17 per \$100 of the County Assessment remains the same. Mr. Lyons made a motion to accept the changes. Ms. Richards seconded the motion. The motion passed unanimously.

**d. Kayak Racks**

Mayor Davis said that we have 16 racks in and 13 are rented, 23 people have paid for access and parking. Mayor Davis said that it is the responsibility of Mr. Scheurer, Ms. Wilson and Ms. Richards to monitor the marina kayak storage, access and parking. Mr. Scheurer said the kayak rack storage access requires a combination to get through the locked gate and that he has not seen anyone other the people who have paid for parking access use the kayak launching area. Between Security and the Kayak committee we need to make sure that any car parked in the marina has a parking pass visible in their car.

Ms. Richard said that she wanted to say for the record that it has been a pleasure working as a liaison between the Kayak Committee and the Town Commissioners. This Committee brought to the Commissioner's attention something that they thought the town could benefit from. They made a plan and followed it. They did not push the envelope. Now we have a very valuable addition to our community. Ms. Richards said that she is hoping within the next several years, with fees collected, they'll be able to cover the \$6,665 expenses for the project. She said she likes the way it was handled and they are to be commended.

**e. §43-5.E(2)(b) Building Construction, Accessories, Windows**

Mr. Hill asked if the change was necessary. He said that we can get where we want to go by providing the flexibility provided in §43-4.3, Alternate materials and methods. It basically says that if anyone wants to use something other than what is prescribed then it must be approved by the Building Inspector. Mr. Mandalas read "The Building Official shall approve any such alternate, provided that he or she finds that the proposed design is satisfactory and complies with the provisions of the IRC or the IBC, as appropriate, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in the code in quality, strength, effectiveness, fire resistance, durability and safety".

Mr. Hill said under §43-4.5 E (2), Accessories you have doors, wouldn't we have to make the same change for doors. Then we would have to do the same thing for shutters. Mr. Hill said that instead of going item by item we have §43-4.3. The only thing that is missing is "and reviewed by the Environment Review Committee" which is important because even though it may meet all the technical requirements if it is ugly we don't want it.

More discussion ensued. Mr. Ingram, 60 Tidewaters, said that we need to be more sensitive to new home owners so they can get through the process without the delays of going to the Committee for everything. He said that the only improvement he can see with all the new materials coming along is rather than have the Zoning Officer make these decisions, have a separate list as they get approved so that there would be a guideline of what has already passed.

Mr. Hill said that when a material becomes widely used in the construction industry we should put it on the approved list. Last fall windows made of a composite material came before the ERC for approval after the Zoning Officer approved it. The ERC approved it as well. Wood may one day be a thing of the past. The composite was allowed and maybe we should look at putting that on the list of approved materials. Mr. Hill said even though not stated in §43-5.E(2)(b), the ERC has the approval authority through the Covenants and other provisions.

Mr. Hill proposed that change is not needed to §43-5.E(2)(b) Building Construction, Accessories, Windows. Mayor Davis asked the other Commissioners if they were comfortable with that decision. They responded that they were. Mayor Davis said then we are not taking any action.

**8. NEW BUSINESS**

**a. Committee appointments**

Mayor Davis announced that Pat Linn and Bob Stevens terms are up and she said she would like to re-appoint them for a five year term serving the Board of Adjustments. Mr. Lyons made a motion to approve the appointments. Mr. Hill seconded the motion. The motion passed unanimously.

**b. Amendment to §130-56, Public Hearing**

Mayor Davis said that this Ordinance amends Section 130-56 of the Municipal Code of the Town of Henlopen Acres so that a majority of a quorum, rather than a super majority of all members of the Board of Commissioners, may adopt zoning amendments, as follows: §130-56, Public Hearing, “No such amendment, supplement or change shall become effective until after a public hearing before the commissioners of Town of Henlopen in relation thereto at which hearing parties and interested citizens shall have an opportunity to be heard. At least 15 days’ notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in the Town of Henlopen Acres.” We are deleting; (Upon completion of the public hearing, such amendment, supplement, etc., shall not become effective except by a favorable vote of  $\frac{3}{4}$  of all the members of the Commission of the Town of Henlopen Acres.)

Mr. Mandalas said that somehow the language for super majority vote from §130-55, Protest against changes, erroneously got inserted into the general provision §130-56. §130-55 has the requirement for a  $\frac{3}{4}$  super majority vote in the instance where you have a proper protest. Under State Code a proper protest can be filed by 20% of the property owners who are affected by the proposed zoning change. If they file a protest then it takes a super majority of Commissioners to adopt that zoning change. Mr. Mandalas said that if your intention is to have just a simple majority requirement for zoning changes unless there is a proper protest then he advised deleting the sentence marked for deletion.

Mr. Hill said that we need to have a public hearing on this. We want to change §130-56 so it requires just a simple majority vote for zoning changes. If there is a protest filed by 20% of the property owners affected by the proposed zoning change then a super majority vote is required to pass the zoning change. Mr. Hill suggested cleaning up the language in §130-56, changing “parties and interested citizens” to “interested parties and citizens”, changing “Members of the Commission of the Town of Henlopen Acres” to “Members of the Board of Commissioners of the Town of Henlopen Acres” and changing “vote of  $\frac{3}{4}$  of all members” to “super majority vote”. Mayor Davis said that we will leave the changes to Mr. Mandalas for presentation at the Public Hearing to be held at the next regular meeting of the Board of Commissioners.

A motion was made by Mr. Lyons to put Amendment to §130-56 to Public Hearing. Mr. Hill seconded the motion. The motion passed unanimously.

**c. Proposed ordinance on payment of obligations to town**

Mayor Davis said that this is a proposed Ordinance to amend the Town Code of The Town of Henlopen Acres, Charter 32, Good Standing; §32-1, Payment of Obligations; for applicants for Town approvals, permits, licenses, and/or the use, receipt of or provision of services shall be current on all obligations to the Town prior to receiving such approval or services. Examples of such services are listed. This is due to people who have fines or other outstanding debt to the Town still requesting services of the Town and they should be paid before any services are provided.

Mr. Hill said we won’t vote on this today but it is a very good idea, looking at it from the Treasurer’s point of view. We need to improve our process of enforcing the collection of money due to the Town, particularly fines because most of our Code if not all of it is a criminal process. The money is not even due unless there is a conviction. We can issue a ticket for a zoning violation and then they come in and want a permit for something else and they do not owe any money yet because there hasn’t been a conviction. Mr. Hill asked Mr. Mandalas if he could help us decriminalize this process.

Mr. Mandalas said he has other Towns who have set up a separate Chapter of the Code titled Civil Offenses. It lays out a basic procedure in which you can make some of the violations that are quasi criminal in nature civil offenses. There is less due process involved. You can collect on the civil assessment more quickly. Mr. Mandalas said that you have to be careful with which violations you change because there is due process that should be involved in criminal cases.

Discussion ensued about what violations should and should not be changed to civil. Mayor Davis asked the other commissioners to submit in writing to Mr. Roth any ideas they have on this topic. She said that we will proceed to get an ordinance put together. This does not need to have a public hearing but we do need to move along on this. Mr. Roth said that he drafted the Ordinance, 8C in the packet, from Bridgeville's Code.

**d. Removal of registrants from voting roll**

Mayor Davis asked the Commissioners to review the list in the packet of disqualified voters. Mr. Roth said that he confirmed that the individuals on the list moved, transferred ownership or died. Mr. Hill made a motion to remove the disqualified voters from the voting roll. Ms. Richard seconded the motion. The motion passed unanimously.

**9. Any other business that may come before the Commissioners**

Mr. Hill made a motion to go into executive session after a five minute break. Ms. Richard seconded the motion. The motion passed unanimously.

**10. Executive Session**

Executive Session began at 11:55 am.

Commissioners came out of Executive Session at 12:20 pm

**11. Consideration and/or action on matters discussed in Executive Session**

Commissioner Hill made a motion to approve action taken during the Executive Session. Motion passed unanimously.

**12. Adjournment**

Quarterly Meeting adjourned at 12:51 am

Approved: \_\_\_\_\_, 2011